

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-219901

DATE: August 23, 1985

MATTER OF: Ferguson-Williams, Inc.

DIGEST:

No legal basis exists to preclude a contract award merely because a bidder may have submitted a below-cost bid.

Ferguson-Williams, Inc., protests the acceptability of the low bid of Del-Jen, Inc., under the second step of a two-step formally advertised procurement issued by the Department of the Navy for base operating services at the Whiting Field Naval Air Station, Milton, Florida. We dismiss the protest.

Ferguson-Williams contends that Del-Jen's bid could not have been in conformance with the company's step-one technical proposal because Del-Jen's price is 10 percent below the second low bid, and also is less than the price being paid to the incumbent contractor for much less effort, Ferguson-Williams contends, than involved in the protested procurement. Ferguson-Williams requests that Del-Jen's bid, and any supporting data, be evaluated to ensure the bid is based on the step-one technical proposal the government evaluated and accepted.

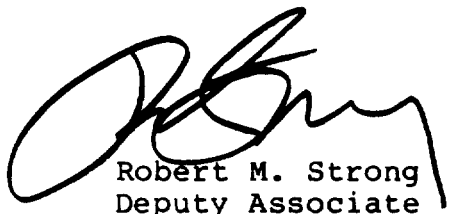
Two-step formal advertising is a hybrid method of procurement, combining the benefits of competitive advertising with the flexibility of negotiation. While the step-one procedure is conducted in a manner similar to a negotiated procurement, step two is conducted in accordance with formal advertising procedures, with each firm bidding on its own step-one technical proposal. Essex Electro Engineers, Inc., B-213892, Apr. 17, 1984, 84-1 C.P.D. ¶ 434.

Ferguson-Williams has not alleged that Del-Jen's bid on its face evidences any exceptions to the material requirements of the solicitation, under which Del-Jen had submitted an acceptable technical proposal, and Del-Jen's bid thus must be considered responsive. Lusardi Construction Co., B-210276, Sept. 2, 1983, 83-2 C.P.D. ¶ 297. There is no legal principle upon which an award to a responsive bidder may be precluded or disturbed because the firm may have

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submitted a below-cost bid. Aeroglide Corp., B-215484, July 2, 1984, 84-2 C.P.D. ¶ 9. Rather, the question of whether a bidder can adequately perform the contract at its bid price depends on the bidder's responsibility. Id. Before making an award, the agency must make an affirmative determination of responsibility. Our Office does not review such a determination absent a showing that the contracting officer acted fraudulently or in bad faith, or that definitive responsibility criteria in the solicitation have not been met. Neither exception has been alleged here.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel